

2006 ENVIRONMENTAL NEGOTIATIONS COMPETITION
CONFIDENTIAL INSTRUCTIONS: STATE/TPI

Confidential Instructions for the State for Round 1¹

The State believes it has sovereign immunity from liability for the damage caused by the Devil's Avalanche slide. See Gov't Code § 818.4. The State realizes, however, that its claims of immunity are not bullet-proof, and that, in light of the tremendous destruction to the town of Salmon Run and its environs, if it cannot get the suit dismissed on motion, it could face a jury easily swayed to find the State culpable in its review and approval of the Devil's Avalanche THP. Subsequent independent reviews of the studies have demonstrated that the scientific analysis in the approved THP did not account for the largely unprecedented severe weather conditions and may have also relied on overly "optimistic" scientific assumptions. While the State believes that it was entitled to rely on TPI's studies, it recognizes that its regulators were under significant political pressure and time constraints in reviewing the many THPs submitted by TPI, and that certain shortcuts in its review may have taken place, making it vulnerable to claims of negligence. The State also realizes that its past working relationship with TPI, not to mention a certain "revolving door" between State foresters and scientists and those who work for TPI as employees and consultants, creates (correctly or otherwise) an appearance of cronyism that would not play well to a jury.²

As a result, the State has informed you as its attorneys that, while it believes that TPI should bear the bulk of the monetary liability here, it has obtained authorization to agree to contribute up to \$2 million toward the costs of the damages to Salmon Run. Admittedly, this is far less than the \$150 million being sought by the community for the damages to the town, but the State is not authorized to agree to more than this amount, and it would have to seek special legislative approval for additional monies.

In lieu of direct cash payments, however, the State does have significant resources and leverage to work with the community on certain rebuilding projects, and has pre-approved federal and state grant funds available to it in a total amount of \$80 million in cash or in-kind value to support programs such as land acquisition or set-asides (\$30 million), reforestation (\$15 million), riparian cleanup and monitoring (\$20 million), fish restocking (\$5 million) and job retraining (\$10 million). Depending on the focus of plaintiffs' demands in settlement, you can determine how much to offer from these

¹ You represent the State only in Round 1. Your representation of the State should not be affected by any perceive conflicts in position between the State in Round 1 and TPI in Round 2, and you should represent your client for this Round without regard to any conflicting position your client in Round 2 may take.

² State elected officials are also well aware that, whatever the legal outcome, the portrait painted at the trial could truncate the careers of anyone associated with the events. As a result, staff for some of these elected officials have contacted you to express their bosses' concerns that the voting citizens of Salmon Run be treated fairly in settlement.

available programs. In fact, you may want to consider offering some of these funds up front, such as seed money for job retraining and land set-asides (such as for acquiring TPI's highly valued "crown jewels"), in order to facilitate settlement and redirect the plaintiffs' claims of liability against the State.

In other matters, the State now realizes that it will need to increase its scrutiny of all future THP filings by TPI and its oversight of all future logging by the company. The State is willing to agree to dedicating personnel and forest managers for this task, and to ensure that its reviewers have no ties (from previous employment or otherwise) with TPI for all such tasks, in order to ensure independent review and oversight going forward.

The plaintiffs will open the first round of negotiations with the State.

Confidential Instructions for Timberline Products, Inc. for Round 2³

For purposes of Round 2, assume that there has been no agreement reached between the plaintiffs group and the State.

While it recognizes internally that the Devil's Avalanche THP could have been more thorough in its data and analysis, TPI believes that the science behind its THP was adequate and all that was called for by the State in its regulations and review. To the extent that more should have been required of the company in terms of studies or mitigation measures, TPI believes that was the State's responsibility as the agency with oversight and approval authority for THPs. Further, TPI feels that the mudslide and destruction of the Steelhead River were "forces majeure", due to the unprecedented rains, and could not have been predicted -- or prevented -- in any event. Nonetheless, TPI is pragmatic and realizes that all (or most) fingers are going to point to TPI's logging at Devil's Avalanche for the damage done to Salmon Run and its environs. TPI cannot afford drawn-out litigation, or the bad public relations that will come if it rejects out of hand, or resists too aggressively, the community's demands.

At the same time, TPI realizes that it has some negotiating leverage, as it is well aware of the diverse nature of the plaintiffs' group and that many of those within the group are there only reluctantly and by necessity. TPI knows that, within reason and (under pressure from Lester) with a degree of compassion, it can use the differences between the likes of TRAC on the one hand and TPI's employees and the commercial folks in Salmon Run on the other to undermine support for the more aggressive elements of the plaintiffs' stated positions.

The company has \$50 million in insurance (above a \$1 million deductible) to cover monetary damage sustained by community, and the company has put its insurers on notice of the existing claims. You may assume for this negotiation that the insurance money will be available to the full limits of the coverage. Beyond its insurance coverage, because of the company's heavy debt-load, TPI can ill-afford much in terms of further monetary payments. The company has \$30 million committed to further capital investments that it could pull if needed, but only if and to the extent needed to settle the existing claims. Note that delay or cessation of the projects for which that capital has been earmarked would also have an adverse impact on the size of the workforce (and, hence, the number of employees to be retained) at the TPI mill.

TPI knows that TRAC is demanding \$150 million to rebuild the town and restore the community as part of its damage demand, but it does not know how much of this is "real" dollars. TPI believes that only a certain percentage of the claimed amount is hard dollars for actual rebuilding of the town. TPI feels that it only should pay for those hard costs and hopes that \$50 million, at most, will be sufficient to cover those costs. TPI can

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otherwise capitalize the costs of reforesting the Devil's Avalanche area and is willing to commit to doing this (and, in fact, was already obligated to do so under the reclamation plan in the Devil's Avalanche THP), but without committing to a particular dollar amount or time deadline for doing so. TPI does not want to have to pay for the restoration of the Steelhead River, as it has neither the funds nor the expertise to do so. It hopes that it can convince TRAC to rely on the State for this aspect of reclamation.

TPI realizes that many of its own workers have been harmed and displaced as a result of the slide and is willing to assist with temporary job retraining (until at least the mill can be restarted and the workers rehired), and the company is willing to guarantee job security to those who commit to return to their old jobs. TPI is not particularly interested, however, in helping former employees or other townspeople (particularly the "enviros", given their hostility to the logging industry) find new careers at its expense as a result of this unfortunate accident.

TPI understands that some in the plaintiffs' group (especially TRAC) may request increased scrutiny for future logging by the company, and is willing to accept this, provided that such oversight is conducted through the State and not by TRAC itself. TPI recognizes that its "crown jewels" may be demanded as "payment-in-lieu" as well, for any amounts demanded above what the company can otherwise afford. TPI is willing to consider deeding certain of these lands (the least accessible for logging anyway) to the State, but wants full market value recognition for them. Those lands total 95,000 acres and are worth an estimated \$100 million untouched (if the land is logged, the land's value will plummet, but the milled lumber would be worth \$250 million). The company is willing to give up 55,000 of those acres in the most remote locations, which are valued at \$45 million untouched (with the logged timber valued at \$125 million milled)-- but again, only if it has to. The company believes that giving up more than this would likely push the company into insolvency, if not immediately, then certainly over time after drastic layoffs and other cost-cutting measures.

TPI will open the second round of negotiations with the plaintiffs.